

Preferred Communication Systems, Inc.
400 East Royal Lane
N24
Irving, Texas 75039

August 15, 2005

800 MHz Transition Administrator
c/o Robert B. Kelly
Squire, Sanders, & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044-0407

**Re: Elections of Preferred Communication Systems, Inc. – TA Contingent 800 MHz
Guard Band Election Letter, dated August 1, 2005**

Dear Mr. Kelly:

Preferred Communication Systems, Inc. (“Preferred”) is in receipt of your letter, dated August 1, 2005, offering the option for Preferred to elect, “on a contingent basis” to relocate some or all of its licenses to the Guard Band spectrum ((i.e., 816-817 MHz/861-862 MHz) (“Letter”).

As you note in the Letter, on May 13, 2005, Preferred filed a timely election to relocate its EA licenses to the ESMR band. Such a relocation is expressly contemplated by the Commission’s December 22, 2004 *Supplemental Order* in which the Commission expressly stated that “any non-ESMR EA licensee...has the option to relocate into the ESMR portion of the band.”¹ Preferred is therefore aware of no basis on which the TA could deny that right to relocate in accordance with the terms of the *Supplemental Order*. Preferred reaffirms its election to relocate its EA licenses to the ESMR band as it is entitled to do.

In its May 13, 2005 election, Preferred included certain Site-Based licenses that it holds in Puerto Rico in its election to move to the ESMR band. Preferred also holds a number of EA licenses in Puerto Rico. As the Letter accurately notes, Preferred, along with others, has challenged the restriction on the ability of such EA licenses to “bring along” site based licenses into the ESMR band. Note, these challenges include pending cases in the United States Court of Appeals for the District of Columbia Circuit.² Preferred continues to maintain that these restrictions clearly violate

¹*In the Matter of Improving Public Safety Communications in the 800 MHz Band, Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120, 25156, ¶ 79 (2004), *recon. and appeal pending* (“*Supplemental Order*”).

² See EA Licensee Election of Skitronics, LLC, dated May 10, 2005, at p.1. Further, Preferred has itself filed a petition for review of the FCC’s December 22, 2004 Supplemental Order in Docket No. 02-55 with the United States Court of

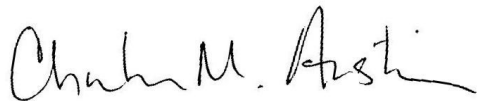
the FCC's statutorily imposed mandates to maintain regulatory parity, promote diversity of license ownership and foster competition and must be eliminated.

Moreover, Preferred would note that under the *Initial Report and Order* it is under an obligation to move its site-based licenses in the way that causes the least disruption to the existing licensing scheme and cost.³ In the Puerto Rico EA market, both Channels 121-400 and Channels 401-600 are heavily encumbered by largely non-Nextel licensees. However, relatively few (18) of the former NPSPAC Channels are presently occupied. As a result, to meet its relocation obligation, Preferred's site-based licenses necessarily would be moved to these former NPSPAC Channels in the ESMR portion of the 800 MHz Band.

Furthermore, even if Preferred were inclined to elect to relocate its site-based licenses to the Guard Band⁴, Preferred has concluded, based on detailed analysis by its engineering consulting firm. Concepts to Operations, Inc., that there would be insufficient spectrum available for Preferred to relocate its site-based licensees in Puerto Rico to the Guard Band frequencies in accordance with the terms of the *Initial Report and Order and Supplemental Order* (i.e., comparable facilities).⁵ Therefore, even a contingent election to move to the Guard Band would be impractical.

As noted above, According to Preferred's analysis of the current licensing databases for the Puerto Rico EA market, the only spectrum available in the 800 MHz Band to relocate its twenty-one (21) site-based licenses is the former NPSPAC Channels (Channels 710-830 or 822.0125-823.9875 MHz/866.0125-868.9875 MHz). Accordingly, Preferred reaffirms its election to move its site-based Channels in the Puerto Rico EA market to the ESMR portion of the 800 MHz Band.

Sincerely yours,



Charles M. Austin
President
Preferred Communication Systems, Inc.

cc: Brett Haan
Paul C. Besozzi

Appeals for the District of Columbia Circuit. Therein, Preferred has challenged, among other things, the conditions imposed on certain EA licensees making the election to transfer to the ESMR Band.

³ See *In the Matter of Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd. 14969, 14070 ¶¶ 2, 4 (2004), as amended by *Erratum*, released September 10, 2004, *Erratum*, DA 04-3208, 19 FCC Rcd. 19651 and *Erratum*, DA 04-3459, released October 29, 2004, *recon. and appeal pending* ("Initial Report and Order"); see also AirPeak Communications, LLC and Airtel Wireless Services, LLC's Comments, December 2, 2004, at pp. 11-12.

⁴As the TA knows, Preferred cannot be required to do so. *Initial Report and Order*, at p. 15070, ¶ 157.

⁵Preferred maintains that this analysis will show a similar shortfall in other locations elsewhere in the continental U.S. Preferred intends to file this analysis with the TA and Commission in the near future.